INTERIOR BOARD OF INDIAN APPEALS

Gregory Snelson v. Acting Deputy Assistant Secretary - Indian Affairs (Operations)

10 IBIA 57 (07/30/1982)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

GREGORY SNELSON
v.
ACTING DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 82-32-A Decided July 30, 1982

Appeal from decision by the Acting Deputy Assistant Secretary--Indian Affairs (Operations) approving rental increase.

Affirmed.

1. Indian Lands: Leases and Permits: Rentals

Rental increase based upon calculated increase in value of leased Indian trust land was properly assessed under terms of a written lease permitting rental adjustment at 5-year intervals.

APPEARANCES: Alfred McBee, Esq., for appellant; Vernon Peterson, Esq., Office of the Regional Solicitor, for appellee.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On April 24, 1981, appellant Gregory Snelson was notified that, pursuant to provision 7 of his November 22, 1976, lease of Indian trust land described as lots 9 and 10, Hermosa Point Summer Homesites, Swinomish Indian Reservation, Washington State, a rental rate adjustment of his lease was planned by the Bureau of Indian Affairs (Bureau), Puget Sound Agency. On July 10, 1981, appellant was notified that the annual rental rate for the leased lots was increased from $250 to $850. Appellant sought relief from this decision, appealing first to the Bureau's Portland Area Director (Area Director), subsequently to the Acting Deputy Assistant Secretary--Indian Affairs (Operations) (appellee), and to this Board. In his appeal for relief to this Board, denominated Notice of Appeal and Petition, appellant has set out five allegations in support of his demand that the rental increase be disapproved. He contends: (1) The decision appealed is arbitrary and capricious, because it is contrary to the terms of the lease and Departmental regulations published at 25 CFR Part 131; (2) the decision is unreasonable because appellant was never afforded an opportunity to present evidence of rental value; (3) appellant has been denied access to the Bureau's appraisals

upon which the rental adjustment is based and has therefore been hindered in the preparation of his case; (4) appellant has been denied an opportunity to present an appraisal of his own to the Bureau; and (5) an assignment of the fee title to the trust lands has occurred, in violation of the terms of appellant's lease. Although the time for briefing this appeal has expired, appellant has failed to support his notice of appeal with briefs or other supporting documents or affidavits. The complete record on appeal establishes that his appeal is without merit for the following reasons.

Appellant's lease provides for periodic review of the rental rate to be paid for the leased lots, which are not income producing. Review of the rent is to be conducted at 5-year intervals in conformity to the provisions of 25 CFR Part 131. The pertinent regulation, 25 CFR 131.8, provides that leases of Indian trust land shall provide for periodic review of rents at not less than 5-year intervals, in the case of lands such as are leased to appellant. In April 1981 appellant was notified in writing that the first scheduled rental adjustment review was being made by the Bureau. On July 10, 1981, he was notified, again in writing, that his rent was increased. In the July 10, 1981, notice he was informed of his right to appeal and to present supporting documentation to the Area Director. Appellant filed a notice of appeal unsupported by any offered proof alleging error by the agency, a procedure which he also adopted before appellee following the denial of his appeal by the Area Director.

Before appellee, appellant again alleged prejudicial error by the Bureau but failed to document the claimed error or offer proof to show that the rental increase was in error. When appellant's case was docketed by this Board he was informed that his brief was to be filed within 30 days from the date the notice of docketing was received by him. Appellant's attorney received the notice of docketing on April 8, 1982. No brief has been filed. The Board's notice of docketing also informed appellant that, if a need for further fact-finding were demonstrated by the briefs filed with the Board, a hearing into this matter would be ordered. It is apparent from the record on appeal that no hearing is required.

The repeated failure by appellant to file supporting documents or briefs in support of his claim for relief indicate that this appeal is prosecuted for the purposes of delay only. Despite this appearance, the Board has examined the complete record as constituted on appeal for error in the light of the five allegations of Bureau misconduct advanced by the notice of appeal. The record, consisting primarily of the lease, notice of proposed rental adjustment, notice of adjustment, and decisions by the Area Director and appellee, indicates that the rental rate adjustment in this case was regularly and correctly arrived at by the agency. The periodic review was conducted timely, according to the terms of appellant's lease, which was itself made in conformity to 25 CFR Part 131. Appellant was notified of his right to appeal and informed that he could submit additional proof to show the decision to increase his rent was wrong. He appealed to the Area Director but failed to submit any argument or proof to show that a different rent was required than that set by the agency. The Area Director, denying appellant's petition, explained his action:

> The rental adjustment is based on an appraisal. To determine the fair annual rental, the appraiser researched local records to establish the price which properties similar to the one rented by Mr. Snelson have sold for in the recent past. Since each property is unique, adjustments are made for any differences such as size, location, utilities, etc. This provides the appraiser with a price that the leased property would probably sell for at the time the appraisal was written if it were placed on the open market. An eight (8) percent rate of return was applied to this probable selling price (fair market value) to determine the rental value. Based on a lot value of $10,600, the result was a current fair annual rental of $850. The methodology utilized is one of the commonly accepted appraisal methods for determining the rental value of a vacant lot. It is neither arbitrary, capricious, nor unjust.

(Area Director's Decision, dated Aug. 18, 1981, at 1).

The Area Director also explained the agency action in terms of the regulatory requirements and the conditions imposed by the lease agreement:

> The lease which was entered into by your client and the Indian owners on November 22, 1976 provided for a rental adjustment on the 5th and 10th years of the lease in accordance with the regulation in 25 CFR 131. The regulation referred to is 131.8 which states that "the lease shall provide for periodic review, at not less than five-year intervals, of the equities involved. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by the contract or the contribution value of such improvements." By virtue of your client's entering into the lease and agreeing to the conditions thereof, they were made aware that this rental adjustment was forthcoming as early as five years ago. Also, the Puget Sound Agency informed Mr. Snelson on April 24, 1981, that a rental review and adjustment was forthcoming. Therefore your contention that the Acting Superintendent's action was made without notice to the appellant is unfounded. With respect to your statement that your client was not given an opportunity to be heard or to submit evidence touching upon the question of what would be a fair rental for the said premises, this is the purpose of the appeal procedure. It should be noted that your appeal does not express an opinion of value that is supported by evidence such as comparable sales or rentals.

(Area Director's Decision, dated Aug. 18, 1981, at 2).

The record on appeal substantiates, and the Board finds, that the analysis by the Area Director is correct: appellant has received the benefit of the terms of his lease and applicable Departmental regulations in connection with the adjustment of his rent.

Appellee correctly summarized the gist of this appeal when he observed in his decision dated February 2, 1982, at page 1, that:

> [Y]ou state that no reason was given for the rent increase and that Mr. Snelson had no opportunity to submit evidence on such an increase. We would point out that the "reason" for a rent increase is contained in Article 7 of Mr. Snelson's lease. The essence of the "reason" is to take into account prevailing economic conditions at the time of the review for rental adjustment. This action is in accordance with 25 CFR 131.8 and was rightly performed by the Agency Superintendent. Mr. Snelson had the opportunity to submit evidence in his appeal to the Area Director as well as in his present appeal to the Commissioner. That he has failed to do so seriously weakens his appeal.

Finally, appellant's contention that there was an assignment of the ownership of the fee title to the leased property is without factual basis. The record shows, and appellant does not deny, that the legal title to the leased land remains in the United States, as trustee, a condition which has remained constant since the execution of appellant's lease on November 22, 1976. The equitable interest of the Swinomish Tribe in the land in question is limited to a 162/6,480 share which it has held since the lease was consummated.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) dated February 2, 1982, is affirmed. Appellant's rent is properly fixed at $850, payable annually.

This decision is final for the Department.

//original signed
Franklin D. Arness
Administrative Judge

I concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge